

1 Daniel Feder (State Bar No. 130867)
2 **THE LAW OFFICES OF DANIEL FEDER**
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6 Attorney for Plaintiff Ann Otsuka

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 ANN OTSUKA, an individual; JANIS) Case No.: C-07-02780 SI
11 KEEFE, an individual; CORINNE PHIPPS, an)
12 individual; and JUSTIN KISER, an individual;) **PLAINTIFF ANN OTSUKA'S**
13 and on behalf of all others similarly situated,) **CONDITIONAL NONOPPOSITION TO**
14) **PLAINTIFFS JANIS KEEFE, CORINNE**
15 Plaintiffs,) **PHIPPS, AND JUSTIN KISER'S MOTION**
16 v.) **TO BE RELIEVED AS COUNSEL**
17 POLO RALPH LAUREN CORPORATION; a)
18 Delaware Corporation; POLO RETAIL, LLC.,) **Date: September 21, 2007**
19 a Delaware Corporation; POLO RALPH) **Time: 9:00 a.m.**
20 LAUREN CORPORATION, a Delaware) **Judge: Hon. Susan Illston**
21 Corporation, doing business in California as) **Location: Courtroom 10, 19th Floor**
22 POLO RETAIL CORP; FASHIONS OUTLET) **450 Golden Gate Avenue**
23 OF AMERICA, INC., a Delaware Corporation) **San Francisco, California 94102**
24 and DOES 1-500, inclusive,)
25)
26 Defendants.)
27)

21 Plaintiff ANN OTSUKA requests that the Court grant Plaintiffs JANIS KEEFE,
22 CORINNE PHIPPS, and JUSTIN KISER's motion to have Mr. Kitchin relieved as her
23 counsel. But Plaintiff ANN OTSUKA requests that the Court deny Plaintiffs JANIS KEEFE,
24 CORINNE PHIPPS, and JUSTIN KISER's motion to have Mr. Feder relieved as her counsel.

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I. STATEMENT OF FACTS

Plaintiffs ANN OTSUKA, JANIS KEEFE, CORINNE PHIPPS, and JUSTIN KISER ("Plaintiffs") filed this putative class action against Defendants POLO RALPH LAUREN CORPORATION, POLO RETAIL, LLC., and FASHIONS OUTLET OF AMERICA, INC. ("Defendants") in San Francisco Superior Court in May 2006. Plaintiffs were represented by Daniel L. Feder and Patrick R. Kitchin. *See* Declaration of Daniel L. Feder in Conditional Nonopposition to Plaintiffs Janis Keefe, Corinne Phipps, and Justin Kiser's Motion to be Relieved as Counsel ("Feder Decl.") ¶ 2.

At the commencement of this action, Mr. Kitchin and Mr. Feder agreed that, in order to avoid confusion, Mr. Kitchin would take the lead in communicating with Plaintiffs. *See* Feder Decl. ¶3. In or around April 2007, Mr. Kitchin represented to Mr. Feder that Mr. Kitchin could no longer contact Plaintiff ANN OTSUKA despite his best efforts. *See* Feder Decl. ¶4. Mr. Kitchin recommended to Mr. Feder that they file a motion to have themselves relieved as counsel to Plaintiff ANN OTSUKA. Based on the representations made to him by Mr. Kitchin, Mr. Feder consented. *Id.*

On April 23, 2007, Mr. Kitchin filed a motion, in San Francisco Superior Court, to have himself and Mr. Feder relieved as counsel to Ms. OTSUKA. *See* NOTICE OF MOTION AND MOTION TO BE RELIEVED AS COUNSEL-CIVIL (Exhibit A, Feder Decl.). Mr. Kitchin submitted a declaration in support of the motion. *See* Declaration of Patrick R. Kitchin In Support of Motion To Be Relieved As Counsel (Ex. B, Feder Decl.).

In or around May, 2007, this action was removed to this Court.

On or around July 3, 2007, Mr. Kitchin informed Mr. Feder that Plaintiff JUSTIN KISER had terminated Mr. Feder as his legal representative. On or around July 6, 2007, Mr.

1 Kitchen informed Mr. Feder that Plaintiffs JANIS KEEFE and CORINNE PHIPPS had
2 terminated Mr. Feder as their legal representative. *See* Feder Decl. ¶¶6-7.

3 On July 20, 2007, Mr. Kitchen filed the present motion, on behalf of Plaintiffs JANIS
4 KEEFE, CORINNE PHIPPS, and JUSTIN KISER, to have their counsel, Mr. Kitchen, and
5 their just terminated counsel, Mr. Feder, relieved as counsel to Plaintiff ANN OTSUKA. Mr.
6 Feder did not consent to the filing of this motion. *See* Feder Decl. ¶8.

7 In July 2007, Mr. Feder attempted to contact Plaintiff ANN OTSUKA and reached
8 Ms. OTSUKA without any difficulty. *See* Feder Decl. ¶9. On July 24, 2007, Plaintiff ANN
9 OTSUKA terminated Mr. Kitchen as her legal representative. *See* Declaration of Ann Otsuka
10 in Conditional Nonopposition to Plaintiffs Janis Keefe, Corinne Phipps, and Justin Kiser's
11 Motion to be Relieved as Counsel ("Otsuka Decl.") ¶14.

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13 **II. GOOD CAUSE DOES NOT EXIST FOR RELIEVING DANIEL FEDER AS**
14 **COUNSEL TO PLAINTIFF ANN OTSUKA**

15 **A. Mr. Feder did not consent to the filing of this motion**

16 The present motion purports to be brought by Daniel Feder and Patrick Kitchen on
17 behalf of Plaintiffs JANIS KEEFE, CORINNE PHIPPS, and JUSTIN KISER. (The moving
18 papers bear the name and address of Mr. Feder's office). But Mr. Feder did not consent to the
19 filing of this motion. *See* Feder Decl. ¶8. In fact, the motion was filed on July 20, 2007, well
20 after Plaintiffs JANIS KEEFE, CORINNE PHIPPS, and JUSTIN KISER had terminated Mr.
21 Feder as their legal representative. *See* discussion *supra* at I.

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1 **B. Plaintiff Ann Otsuka remains committed to this case**

2 Plaintiff ANN OTSUKA remains committed to this case and to her original motive,
 3 which was to seek justice for herself and similarly situated employees. *See* Otsuka Decl. ¶13.
 4 Contrary to Mr. Kitchin's representation that "Ann Otsuka has failed to communicate with
 5 counsel for over seven months," *see* Notice of Motion and Motion to be Relieved as Counsel
 6 at 2, Ms. OTSUKA attempted to contact Mr. Kitchin numerous times, but without any
 7 response:

- 8 • Ms. OTSUKA called Mr. Kitchin the day before Ms. OTSUKA's deposition,
 9 which was scheduled for December 2006 or January 2007, but was told by Mr.
 10 Kitchin that the deposition had been cancelled and would be rescheduled. Mr.
 11 Kitchin promised to contact Ms. OTUSKA as soon as he learned the new date.
 12 Ms. OTSUKA never heard back from Mr. Kitchin. *See* Otsuka Decl. ¶4.
- 13 • In December 2006, Ms. OTSUKA forwarded to Mr. Kitchin draft answers to
 14 interrogatories propounded by Defendants. *See* Otsuka Decl. ¶6. But no
 15 answers by Plaintiff ANN OTSUKA to Defendants' interrogatories have been
 16 served on Defendants. By contrast, Plaintiffs JANIS KEEFE, CORINNE
 17 PHIPPS, and JUSTIN KISER's answers to Defendants' interrogatories were
 18 served on Defendants in or around January 2007 and May 2007. *See* Feder
 19 Decl. ¶10.
- 20 • During the time period complained of (December 2006-July 2007), Ms.
 21 OTSUKA attempted to reach Mr. Kitchin by phone two or more times. *See*
 22 Otsuka Decl. ¶7.

- During the time period complained of (December 2006-July 2007), Ms. OTSUKA sent more than one email to Mr. Kitchin requesting information about her case, but did not receive any response. *See* Otsuka Decl. ¶8.
- During the time period complained of (December 2006-July 2007), Ms. OTSUKA did not receive letters by federal express from Mr. Kitchin, did not receive voicemails from Mr. Kitchin, did not receive the Substitution of Attorney-Civil form from Mr. Kitchin, and did not receive the motion to be relieved as counsel from Mr. Kitchin. *See* Otsuka Decl. ¶¶ 10, 12.

C. Plaintiff Ann Otsuka remains committed to Mr. Feder

In July 2007, Mr. Feder attempted to contact Plaintiff ANN OTSUKA and reached her without any difficulty. *See* Feder Decl. ¶9. Ms. OTSUKA remains committed to Mr. Feder as her legal representative. *See* Otsuka Decl. ¶ 13.

III. GOOD CAUSE EXISTS FOR RELIEVING PATRICK KITCHIN AS COUNSEL TO PLAINTIFF ANN OTSUKA

Plaintiff Ann Otsuka terminated Mr. Kitchin as her legal representative on July 24, 2007. *See* Otsuka Decl. ¶ 14.

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For the foregoing reasons, Plaintiff ANN OTSUKA requests that the Court grant Plaintiffs JANIS KEEFE, CORINNE PHIPPS, and JUSTIN KISER's motion in part and deny their motion in part.

THE LAW OFFICES OF DANIEL L. FEDER

By: Daniel L. Feder
Daniel L. Feder
Attorney for Plaintiff ANN OTSUKA